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OFFICE OF PETITIONS

In re Application of
Leijon, et al.
Application No. 08/973,306
Filed: April 10, 1998
Attorney Docket No. 66291-155

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
:
:

This decision is in response to the "TRANSMITTAL LETTER PATENT TERM ADJUSTMENT," filed September 29, 2004, notifying the Office of an error in Applicant's favor in the initial determination of patent term adjustment under 35 U.S.C. § 154(b).

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance was **three hundred four (304)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

As a Continued Prosecution Application (CPA) was filed in the instant application on May 8, 2001, the application is entitled to the benefits of the patent term adjustment provisions of 35 U.S.C. §154(b) and 37 C.F.R. §§1.702 through 1.705.¹

On September 20, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is six hundred sixty-nine (669) days.

¹ See MPEP 2730.

The Office initially determined a patent term adjustment of six hundred sixty-nine (669) days based on an adjustment for PTO delay of seven hundred seventeen (717) and thirty-eight (38) days, both pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by applicants' delay of eighty-six (86) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(b). The adjustments of 717, 38, and 86 days have been reviewed and found to be correct. Applicants state that they should have been assessed additional delay for the period of time the application was under suspension.

Applicants filed a petition for suspension of action under 37 C.F.R. § 1.103 on July 8, 2002. The petition was granted in a decision mailed on August 5, 2002. The decision stated that prosecution would be suspended for a period of twelve (12) months from the filing of the petition.

Accordingly, pursuant to 37 C.F.R. § 1.704(c)(1), applicants should have incurred additional delay of three hundred sixty-five (365) days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **three hundred four (304)** days (755 (717 + 38) days of PTO delay, reduced by 451 (365 + 86) days of Applicant delay).

No petition fee was required. The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of adjusted PAIR calculation